

REMARKS

Regarding the status of the present application, Claim 3 has been canceled, Claims 1, 2 and 15 have been amended, and Claims 1, 2 and 4-17 are pending in this application.

Reconsideration of this application is respectfully requested.

It is noted that the inventor's name appears to be misspelled in the Patent Office records. The initially filed Declaration and Power of Attorney incorrectly spelled the last name of the inventor as "Kovaks". The error was corrected by filing a supplemental Declaration and Power of Attorney on March 25, 2003 that corrected the spelling error. The inventors correct last name is "Kovacs". Please correct the Patent Office records. A copy of the supplemental Declaration and Power of Attorney is enclosed for reference.

Claims 1, 4, and 6 were rejected under 35 U.S.C. § 102(b) as anticipated by US Patent No. 4,263,498 issued to Meyers. Claim 1 has been amended to include the subject matter recited in canceled Claim 3, and now more clearly distinguishes over the Meyers patent. It is respectfully submitted that amended Claim 1 is not anticipated by, nor is it obvious in view of, the Meyers patent.

The Meyers patent discloses "A water heating and dispensing device includes a tank which forms the main hot water container, a heating device in the tank which is thermostatically controlled in order to maintain the temperature of the water at the desired level, inlet and outlet conduits associated with the tank and a valve associated with the inlet conduit for controlling water flow into the tank and dispensing of water from the outlet conduit. A separate reservoir is connected to the inlet conduit between the valve and the tank through a venturi nozzle which permits water to flow into and out of the reservoir. The reservoir has collapsible wall portions which collapse to provide for a decrease in volume in the reservoir as water is drawn from it through the venturi nozzle during dispensing of water, and which is expandable to an expanded maximum completely filled condition after dispensing has ceased, as a result of water flowing back from the main hot water container through the venturi nozzle. The maximum filled position has a sufficient volume to reduce the water level in the tank and outlet conduit sufficiently to allow for expansion of water in the tank due to heating, without dispensing water from the outlet conduit due to expansion. The reservoir comprises a cylindrical collapsible tube concentric with the inlet conduit and provided at one end with a rigid closure member in which is formed the venturi nozzle." [See Abstract]

The Examiner's position is that the Meyers patent discloses "variable volume expansion chamber comprising a flexible internal bladder." However, it is respectfully submitted that there is no disclosure or suggestion contained in the Meyers patent regarding a variable volume expansion chamber that is designed (i.e., whose components are constructed and configured) to withstand a pressure of at least 300 pounds per square inch.

It is respectfully submitted that the Meyer patent discloses several embodiments of a flexible member. All are cylindrical in shape and it is stated that they are made from silicone. During normal operation of the Meyers system, the pressure these flexible members are

subjected to is normal system back-pressure of around 5 psi. Due to the nature of the tank "open vent" design, the tank and expansion chamber are not subjected to normal household water pressure. If the faucet connections are reversed, the expansion chamber is, with sufficient water flow, subjected to normal household water pressure. Tests by the assignee of the present invention have indicated that under these conditions the expansion chamber illustrated in Fig. 1 bursts at about 25 psi, considerably lower than normal household water pressure and causes considerable flooding if the water is not turned off in a timely manner. With the Meyer design, the whole expansion chamber assembly needs to be replaced before the tank can become functional again.

It is noted that the Examiner rejected this aspect of the present invention based upon obviousness in view of the Meyers patent. In that rejection, the Examiner stated that Applicant claims that "the expansion chamber is "capable" of withstanding at least 300 psi." It is respectfully submitted that Claim 1 does not state that "the expansion chamber is "capable" of withstanding at least 300 psi" as is asserted by the Examiner, but the explicit language of Claim 1 recites that the "components are designed to withstand a pressure of at least 300 pounds per square inch." Furthermore, there is no disclosure whatsoever contained in the Meyers patent regarding any elevated pressure that can be withstood by the reservoir 30. It is respectfully submitted that the statements made in the preceding paragraph are sufficient to refute the Examiner's position.

The only discussion of an expansion chamber whose components are designed to withstand a pressure of at least 300 pounds per square inch is contained in the present application. Thus, the Examiner's assertion is mere speculation and constitutes hindsight reconstruction of the present invention.

Therefore, it is respectfully submitted that Claim 1 is not anticipated by, nor is it obvious in view of, the Meyers patent. Withdrawal of the Examiner's rejection and allowance of Claim 1 are respectfully requested.

Claims 4 and 6 are considered patentable based upon the allowability of Claim 1. Withdrawal of the Examiner's rejection and allowance of Claims 4 and 6 are respectfully requested.

Claims 2, 5, 7 and 10-15 were rejected under 35 U.S.C. § 103(a) as being obvious over US Patent No. 4,263,498 issued to Meyers.

With regard to Claim 2, the Examiner admitted that the Meyers patent "does not explicitly disclose the use of ... a self-resetting bimetallic control switch." However, the Examiner indicated that "although Meyers does not explicitly discuss the thermostatic control means 72, it is well known in the art of water heating to use self-resetting bimetallic switches to control the heating of water in conjunction with the heating element, such devices rely on different expansion rates of metals in the switch to complete or break an electrical circuit. One of ordinary skill in the art would assume the thermostat 72 to be of such a construction."

Furthermore, in the Meyers system, the thermostat that cuts out the heating element

senses water temperature which regulates the water outlet temperature. If, however, the water tank is empty, for whatever reason, the thermostat will turn on the power and the heater element, without the benefit of water cooling, will go into thermal run-away and burn up. Thus, the tank requires maintenance to make it operational again, which is not the case in the present invention.

It is respectfully submitted that the Examiner has extended the teachings of the Meyers patent beyond its scope and has used hindsight reconstruction in order to reject Claim 2. The Examiner has not produced any reference relating to hot water dispensing systems in which a self-resetting heater control switch is employed to turn off power to the heating element when there is no water in the water tank. This is only disclosed in the present application.

Therefore, it is respectfully submitted that Claim 2 is not obvious in view of the Meyers patent, and certainly not without using hindsight reconstruction.

With regard to Claim 7, it is respectfully submitted that the use of a self-resetting heater control switch that comprises bimetallic switch contacts is not disclosed or suggested by the Meyers patent, and certainly not without using hindsight reconstruction. Therefore, it is respectfully submitted that Claim 7 is not obvious in view of the Meyers patent, and certainly not without using hindsight reconstruction.

Claims 2, 5 and 7 are also considered patentable based upon the allowability of Claim 1. In view of the above, withdrawal of the Examiner's rejection and allowance of Claims 2, 5 and 7 are respectfully requested.

With regard to Claim 10, it is respectfully submitted that the Meyers patent does not disclose or suggest "a heater control disposed within the housing that is coupled to the heating element and that comprises a self-resetting heater control switch that turn off power to the heating element there is no water in the water tank." It is respectfully submitted that the arguments presented above with regard to the allowability of Claim 2 support the allowability of Claim 10. It is respectfully submitted that the Examiner has extended the teachings of the Meyers patent beyond its scope and has used hindsight reconstruction in order to reject Claim 10. Therefore, it is respectfully submitted that Claim 10 is not obvious in view of the Meyers patent. Withdrawal of the Examiner's rejection and allowance of Claim 10 are respectfully requested.

With regard to the Examiner's rejection of Claim 11, it is respectfully submitted that it does not state that "the expansion chamber is "capable" of withstanding at least 300 psi" as was stated by the Examiner. Claim 11 states that "the variable volume expansion chamber is designed to withstand a pressure of at least 300 pounds per square inch" which means that it has a structure and is constructed to withstand at least 300 pounds per square inch. Furthermore, it is respectfully submitted that the arguments made with regard to Claim 1 are sufficient to support the allowability of Claim 11.

With regard to Claim 15, it is respectfully submitted that there is no disclosure or suggestion in the Meyers patent regarding the use of a self-resetting heater control switch that comprises bimetallic switch contacts. It is respectfully submitted that the Examiner has

extended the teachings of the Meyers patent beyond its scope and has used hindsight reconstruction in order to reject Claim 15. The Examiner has not produced any reference relating to hot water dispensing systems in which a self-resetting heater control switch is employed to turn off power to the heating element when there is no water in the water tank. This is only disclosed in the present application.

Claims 11-15 are also considered patentable based upon the allowability of Claim 10. Withdrawal of the Examiner's rejection and allowance of Claims 11-15 are respectfully requested.

Claims 8, 9, 16 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 4,263,498 issued to Meyers in view of US Patent No. 5,778,679 issued to Celorier, Jr. et al. In his rejection, the Examiner admitted that the Meyers patent does not disclose "the specific structure of the expansion tank having a first and second mating section sandwiching the bladder." The Celorier patent is cited as disclosing "a plastic expansion tank having a first and second mating section sandwiching the bladder." The Examiner concluded that "It would have been obvious to one of ordinary skill in the art to modify the device of Meyers to use the plastic construction taught by Celorier, in order to provide a corrosion resistant expansion tank having a capability of withstanding high pressure."

With regard to Claims 8 and 15, it is respectfully submitted that the one skilled in the art would not modify the structure of the Meyers reservoir in the manner taught by the Celorier, Jr. et al. patent. In the Meyers system, the tubing 28 extends through the interior of the reservoir 30 and a cylindrical collapsible tube surrounds it. The fact that the Celorier, Jr. et al. patent discloses the use of a flexible material to separate two portions of a tank is not particularly relevant to the present invention.

In the present system, an orifice block has a suction tube that coupled to the variable volume expansion chamber. The Celorier, Jr. et al. patent does not disclose or suggest the use of any such structure that couples to the expansion tank. In fact, the Celorier, Jr. et al. patent discloses in the paragraph starting at column 7, line 60 that "Illustrative expansion tank 100 is shown in FIG. 1 to include a first molded plastic tank section 101, integrally including first connection means 102, for enabling fluid from a first fluid source (not shown) to be placed in fluid communication with a first interior portion 103 of expansion tank 100; and (b) a second molded plastic tank section 104, which when joined together with first molded plastic tank section 101 forms the expansion tank fluid containment vessel 100, integrally including second connection means 105 for enabling fluid from a second fluid source (not shown) to be placed in fluid communication with a second separate interior portion 106 of expansion tank 100. "

Thus, it is clear that the expansion tank has a first section coupled to a first fluid source and a second section coupled to a second fluid source. This is not the structure of the present invention or the Meyers system. Also, there is no vent hole in the Celorier, Jr. et al. expansion tank. Therefore, it is respectfully submitted that the one skilled in the art would not modify the structure of the Meyers reservoir in the manner taught by the Celorier, Jr. et al. patent.

Furthermore, Claims 8, 9, 16 and 17 are considered patentable based upon the allowability of Claims 1 and 10 from which they depend. Withdrawal of the Examiner's rejection and allowance of Claims 8, 9, 16 and 17 are respectfully requested.

In view of the above, it is respectfully submitted that all pending Claims are allowable over the art of record and that the present application is in condition for allowance.

Reconsideration and allowance of this application are earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kenneth W. Float', with a stylized flourish at the end.

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